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EAST TIMOR

Recommmendations to the UN Secretary General concerning investigations of crimes against humanity and war crimes in East Timor

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EAST TIMOR

Recommendations to the UN Secretary General concerning investigations of crimes against humanity and war crimes in East Timor

On 30 September 1999, Pierre Sané, the Secretary General of Amnesty International, wrote a letter to Kofi Annan, the UN Secretary-General, making the following recommendations regarding the investigation of the crimes against humanity and war crimes committed in East Timor in the context of the UN Consultation process:

Amnesty International has stated clearly in its Open Letters to the UN Security Council and the Commission on Human Rights (CHR) that the Security Council should "promptly create a Committee of Experts to gather evidence of widespread or systematic violations of human rights and international humanitarian law in East and West Timor, and to make recommendations with a view to establishing individual responsibility for international crimes and bringing perpetrators to justice, including through the establishment of an international criminal tribunal."[1]

The Security Council in resolution 1264 (15 September 1999) authorizing the deployment of a multinational force in East Timor (INTERFET), specifically expressed concern about the reports that "systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor."[2] The resolution stressed that "persons committing such violations bear individual responsibility." Acting under Chapter VII of the Charter of the United Nations, it condemned "all acts of violence in East Timor", called for "their immediate end" and demanded that "those responsible for such acts be brought to justice".

On the 27 September, the Commission on Human Rights adopted resolution S-4 which among other things called on the Secretary-General "to establish an international commission of inquiry, with adequate representation of Asian experts, in order, in cooperation with the Indonesian National Commission on Human Rights and thematic rapporteurs, to gather and compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote and to

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[1] See *East Timor: Open letter to members of the UN Security Council (ASA 21/142/99)*, 9 September 1999, and *East Timor: Open letter to all members of the Commission on Human Rights (ASA 21/160/99)*, 21 September 1999.

[2] Resolution S/RES/1264 (1999) adopted by the Security Council at its 4045th meeting on 15 September 1999.

provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions, and to make the report of the commission of inquiry available to the Security Council, the General Assembly and the Commission on Human Rights at its fifty-sixth session."[3]

As you prepare to establish this International Commission of Inquiry, we would like to make recommendations based on Amnesty International's long experience of researching and analysing human rights violations worldwide. In view of the seriousness of the alleged violations, their nature and the scale of their commission, Amnesty International believes that it is imperative that investigations begin immediately, that they are conducted in a thorough and effective manner, and that they are completely independent and perceived to be so by the East Timorese people and the international community. An independent Commission of Inquiry would contribute immensely to the fight against impunity, the restoration of the rule of law and the process of reconciliation in East Timor.

In order for this investigation to be credible and effective, we ask you to take into account the following recommendations.

A. Members of the Commission

1. Members of the Commission should be chosen for their impartiality, competence and independence. They should not be closely associated with any government entity, political party, or other entity potentially implicated in the allegations of human rights abuses, or with any organization or group associated with the victims, as this would damage the Commission's credibility.

2. The Commission should be composed of members of high moral standing and recognized for their knowledge and expertise in human rights, international humanitarian law and criminal law.

3. The Commissioners should be assisted in the field by experts in forensic medicine, in investigations into human rights violations and breaches of international humanitarian law, in criminal investigation and law and the investigation and prosecution of gender-based violence.

[3] Resolution S-4, adopted by the UN Commission on Human Rights at its Special Session on East Timor on 27 September 1999 (UN Doc. E/CN.4/S-4/L.1/Rev.1).

4. The reference in the CHR resolution to adequate representation of Asian experts should be seen as an opportunity to appoint some of Asia's most qualified and experienced human rights experts. It is imperative that their skills and independence are the sole criteria for their appointment to that body, in order to reinforce the trust of the East Timorese people and the international community in the investigations.

B. Mandate and purpose of the Commission

1. The aim of the Commission should be to provide a full account of the truth concerning allegations of human rights violations and breaches of international humanitarian law in East Timor, and in particular to identify individual responsibility for these crimes. The UN's own Mission in East Timor (UNAMET) as well as Amnesty International and other international organizations have documented violations of human rights and international humanitarian law carried out on a large scale and in a systematic way by pro-integration militias acting in collusion with and support from the Indonesian army (TNI) and the police. According to international law these acts constitute crimes against humanity and war crimes.

2. The investigations should be carried out in such a way as to determine individual responsibility for the specific violations including through the principle of command responsibility. The principle of criminal responsibility of the military commander extends to crimes committed by paramilitary groups and/or other armed groups not organized into the official military structures, operating under their control, whether or not they acted under specific and express instructions from the official force.

3. The investigations should be carried out with the aim of bringing perpetrators to justice under the principle of universal jurisdiction applicable to war crimes and crimes against humanity. The evidence collected, the methodology used by the Commission and the reporting methods should ensure that:

- the truth of the crimes is established and made public;
- the victims, individually as well as collectively, are provided with full reparation;
- the judicial process is enabled under national jurisdiction or international jurisdiction to produce a clear verdict of guilt or acquittal.

4. The Commission of Investigation should make recommendations based on its findings to ensure that perpetrators are brought to justice either under national jurisdiction or through the establishment of an international criminal tribunal.

C. Powers, methodology and resources

1. The Commission should be able to carry out its work for a reasonable period of time enabling it to conduct a thorough investigation.

2. The Commission should be allowed to carry out investigative missions throughout the entire territory of East Timor and must have access to all places without restriction.

3. The Commission should also be allowed to travel to other countries to collect evidence and testimonies on human rights violations and breaches of international humanitarian law carried out in East Timor. All states, including Indonesia, should guarantee their full cooperation in order for the Commission to exercise its duties.

4. Wide notice of the establishment, scope and methodology of the Commission should be given and an invitation to present information to the Commission should be broadly disseminated.

5. The Commission should be allowed to request and receive from all states and entities of the UN any information and materials that it believes to be necessary and relevant for its investigations. It should establish procedures to obtain the cooperation of specialized agencies and other bodies of the UN, to ensure that it is able to carry out its work.

6. The Commission should have the authority to compel officials and any person allegedly involved in any human rights violations or breaches of international humanitarian law to appear and testify, and the same should apply to witnesses of human rights violations and breaches of international humanitarian law.

7. The Commission must be provided on an urgent basis with the necessary budgetary, logistical and technical resources to carry out an effective investigation as well as a sustained source of funding.

8. The Commission should establish procedures allowing it to deal with and process information in a confidential way, in order to protect the sources of information and the evidence.

9. Members of the Commission, the experts assisting them and persons accompanying them on mission should be entitled to the facilities, immunities and privileges of experts on mission for the UN as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

10. Victims, complainants, witnesses, those collaborating with the investigation and their families must be protected against ill-treatment and any acts of intimidation or reprisal as a result of their collaboration with the work of Commission. UNAMET and INTERFET should be allowed to, and should have resources to, provide protection to these people in collaboration with the Commission. The Commission should be given the authority to request the assistance of governments to these ends, in particular whenever the safety of the person cannot be guaranteed in East Timor.

11. Victims, their families and their representatives must be informed of, and have access to, any hearings as well as to all information relevant to the investigation, and must be entitled to present evidence; the family of any deceased must have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of the death should be posted and the family or relatives of the deceased should be informed immediately.

D. Cooperation from INTERFET and UNAMET

Under Security Council Resolution 1264 authorizing the deployment of a multinational force in East Timor (INTERFET), the Council, acting under Chapter VII of the Charter of the United Nations, "condemns all acts of violence in East Timor, calls for their immediate end and demands that those responsible for such acts be brought to justice". The resolution authorizes the states participating in the multinational force to "take all necessary measures to fulfil this mandate." In fulfilment of that mandate and of states' obligations under international law to cooperate in the detection, arrest, extradition and punishment of persons implicated in these crimes, INTERFET and UNAMET should cooperate fully in ensuring that the Commission of Inquiry is able to fulfil its mandate.

1. To enable the Commission of Inquiry to fulfil its mandate, INTERFET and UNAMET should be provided with clear guidelines and with sufficient resources and powers to collaborate fully with the Commission, in particular to:

- provide protection to the members of the Commission, experts assisting them, persons accompanying them on mission, victims, complainants, witnesses, and those collaborating with the investigation and their families;
- provide protection and logistical support to the investigative teams of the Commission in the field;
- cooperate in the detection and identification of the alleged perpetrators of crimes against humanity and war crimes;
- secure evidence that the Commission requires, for example, by protecting and restricting access to sites of massacres and zones or areas where there are indications of the existence of clandestine cemetaries;
- provide access to any information that they have which may be of relevance to the work of the Commission;
- ensure the protection of all confidential information, documents and records of the Commission.

2. INTERFET should be provided with powers and the adequate legal framework compatible with international human rights law and standards of criminal justice to:

   - arrest and keep in detention all suspects of human rights violations and breaches of international humanitarian law, particularly in cases of crimes against humanity and war crimes;
   - fully cooperate with requests from national courts of foreign states acting under the principle of universal jurisdiction in order to try crimes against humanity and war crimes, particularly in the arrest and transfer of persons requested by these courts.

3. UNAMET should be provided with a supervisory role in order to ensure that the activities of INTERFET described in point 2 above, are carried out in accordance with international human rights and criminal justice standards.

E. Cooperation with the Indonesian National Commission on Human Rights and UN thematic rapporteurs

1. The Commission of Inquiry should be equipped with procedures to cooperate with the Indonesian National Commission on Human Rights and with the thematic mechanisms of the UN. Clear guidelines on the nature and scope of this cooperation should be established in order to preserve the integrity and sources of the information received by the Commission during its investigation, particularly the identity of complainants, witnesses and collaborators.

2. Cooperation should be based on recognition of the distinct roles, capacity and expertise of those bodies and should not undermine the independence of the investigative mission of the Commission of Inquiry. The role of the Indonesian National Commission on Human Rights should be to facilitate access to people and information, and cooperation from all the relevant Indonesian authorities, including in West Timor and other parts of the Indonesian territory where East Timorese have been forcibly deported or fled.

3. The special procedures of the CHR should cooperate fully with the Commission of Inquiry through the sharing of information and the provision of advice and analysis from their particular areas of expertise.

F. The Commission of Inquiry's conclusions and recommendations

The Commission's conclusions should:

- be submitted to the UN Security Council so that anyone alleged to have committed the human rights violations, crimes against humanity or war crimes described in the report may be brought to justice either through an appropriate judicial system under national jurisdiction or through the establishment of an international criminal tribunal; proceedings initiated should meet internationally recognized standards of fairness and impartiality;

- identify the nature and scale of the crimes committed in East Timor, in particular crimes against humanity and war crimes, as well as the persons and structures responsible for these crimes, in accordance with the principles of international criminal law;

- identify and recommend judicial measures which the international community as well as UN member states should undertake to ensure that those responsible for these crimes are brought to justice;

- identify and recommend measures which should be taken in order to ensure that individual and collective reparation is provided for the victims, their relatives and East Timorese society in general. Such reparation should include restitution, compensation, rehabilitation and satisfaction.

The establishment of a credible and effective International Commission of Inquiry under your leadership presents a unique opportunity to assist the East Timorese people in building a new East Timor on the foundation of the rule of law and respect for human rights. We urge you to ensure that this essential step towards peace and reconciliation in East Timor is taken decisively.

KEYWORDS: CRIMES AGAINST HUMANITY1 / INVESTIGATION OF ABUSES1 / UN / RECOMMENDED ACTIONS / PEACE-KEEPING / WAR CRIMES